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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,798	01/11/2001	Robert C. Frisch	0102323-00062	9352
21125	7590	09/23/2005	EXAMINER	
NUTTER MCCLENNEN & FISH LLP WORLD TRADE CENTER WEST 155 SEAPORT BOULEVARD BOSTON, MA 02210-2604			NGUYEN, BRIAN D	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/758,798

Applicant(s)

FRISCH ET AL.

Examiner

Brian D. Nguyen

Art Unit

2661

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 12 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,6 and 14-17.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.


**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: The applicant amended claim 1 to incorporate the limitations of claims 4 and 5 and argued that Garcia, Parkerson, and Saunders fail to teach that "the second node returns a packet-notaccepted control symbol to the first node indicating receipt on the link of a message packet that is out of sequence" and that "the first node responds to the packet-not-accepted control symbol by re-sending a portion of the sequence of message packets". The examiner disagrees because Garcia clearly teaches these limitations. For example, col. 9, lines 3-11 & 65-67, Garcia teaches that an out-of-sequence packet can only happen if the responder (second node) missed an incoming packet. The second node return a sequence error NACK (negative acknowledged) packet to the first node. In, for example, col. 2, lines 15-17, Garcia teaches that the requestor (first node) retransmits packets starting with the packet that first caused an error condition to be detected. Figure See also figure 8 where the second node sends a packet-not-accepted control symbol (Nack) to the first node and sequence numbers 2-5 are resent. Regarding claims 14, 16, and 17, the applicant argued that the argument above apply equal force to establish that independent claims 14, 16, and 17 are also patentable. This argument is irrelevant because claims 14, 16, and 17 do not include the added limitations of claim 1. The applicant seems to accept that Parkerson teaches the second node returns the control symbol to the first node before the entire message packet has arrived at the second node by not argueing that limitation for claim 1. In one paragraph the applicant, however, stated that the second node returns the control symbol to the first node before the entire message packet has arrived at the second node is not taught by the combination of Garcia, Packerson, and Saunders. The examiner disagrees because Packertson clearly teaches this limitation in, for example, col. 10, lines 45-50. Packerson teaches that the present invention provides for an early detection of errors in establishment and communication and retransmission of the originate packet without having to wait for the entire originate packet to be received..



MARY NGUYEN  
PRIMARY EXAMINER

9/19/05